

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,
v.
MAURA L. CELIS-GARCIA,

Respondent

Appellant

DOCKET NUMBER WD69199

DATE: April 20, 2010

Appeal from:

Circuit Court of Clay County, MO
The Honorable Larry D. Harman, Judge

Appellate Judges:

Division One: Lisa White Hardwick, P.J., James M. Smart, Jr., and Alok Ahuja, JJ.

Attorneys:

Evan J. Buchheim, for Respondent

Rosemary E. Percival, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI,

v.

MAURA L. CELIS-GARCIA,

Respondent,

Appellant.

WD69199

Clay County

Before Division One Judges: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Alok Ahuja, Judges

Following a jury trial, Maura Celis-Garcia appeals her conviction on two counts of first-degree statutory sodomy. She contends the circuit court plainly erred in submitting verdict directors that did not include detailed factual information about the alleged acts of sodomy and thereby violated her constitutional rights. She also contends the court erred in admitting testimony from two expert witnesses.

AFFIRMED.

Division One holds: (1) The verdict directors were legally sufficient in identifying the specific type of hand-to-genital sodomy that constituted the offense against Ms. Celis-Garcia. In light of the defense strategy focusing on the vagueness of the sodomy allegations, the circuit court had no obligation to add factual details to the verdict directors. (2) The circuit court did not err in allowing an expert witness to offer a generalized opinion about common characteristics

children who have been sexually abused. The court also did not plainly err in the particularized testimony of another expert witness because defense counsel strategically chose not to object and instead used the testimony as a means of discrediting the expert.

Opinion by: Lisa White Hardwick, Judge

April 20, 2010

Dissenting opinion by Judge Alok Ahuja: The author would hold that Ms. Celis-Garcia is entitled to a new trial based on plain error in the verdict-directing instructions used to submit the case to the jury. Those instructions merely required the jury to find that Ms. Celis-Garcia engaged in hand-to-genital contact with each of her child victims, at any point during a 15-month time period. Because the victims had testified to numerous alleged incidents of such hand-to-genital contact, the verdict directors as submitted did not required the jury to unanimously agree on the specific act which justified Ms. Celis-Garcia's conviction. Based on the victims' testimony, those incidents allegedly occurred. By failing to do so, the trial court failed to safeguard Ms. Celis-Garcia's constitutional right to unanimous jury concurrence in her guilt.

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